

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

REC  
EPA HEADQU  
HEARING CL  
1997 SEP 29 PM 12:0

IN THE MATTER OF )

GTE Corporation )  
One Stamford Forum )  
Stamford, CT 06904 )

Respondent )  
\_\_\_\_\_ )

Docket No.

EPCA-97-H-001  
CWA-97-H-001

COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 325 of the Emergency Planning and Community Right to Know Act of 1986 (hereinafter "EPCRA"), 42 U.S.C. § 11045 and Section 311 of the Clean Water Act, 33 U.S.C. § 1321 as amended by the Oil Pollution Act of 1990.
2. This Complaint serves as notice that the United States Environmental Protection Agency (hereinafter "EPA") has reason to believe that Respondent has violated Sections 302(c), 303(d), 311(a) and 312(a) of EPCRA, 42 U.S.C. §§ 11102(c), 11103(d), 11021(a), 11022(a), and the regulations promulgated thereunder and codified at 40 C.F.R. Parts 355 and 370, governing the submission of emergency and hazardous chemical inventory forms, by owners and operators of covered facilities.
3. This Complaint also serves as notice that EPA has reason to believe that Respondent has violated Section 311(j) of the Clean Water Act, 33 U.S.C. 1321(j), as amended by the Oil Pollution Act of 1990 and the regulations promulgated thereunder at 40 C.F.R. Part 112 "Oil Pollution Prevention," "Requirements for preparation and implementation of the Spill Prevention Countermeasure and Control Plan" ("SPCC").

Parties

4. The Complainant, by delegation from the Administrator of the EPA, is the Assistant Administrator for the Office of Enforcement and Compliance Assurance.
5. The Respondent is GTE Corporation ("GTE"). GTE, a telecommunications company, is incorporated and registered to do business in the State of Delaware, and located at One Stamford Forum, Stamford, Connecticut 06904.

## EPCRA Statutory and Regulatory Requirements

6. Section 302(b), 42 U.S.C. § 11002, and the regulations found at 40 C.F.R. Part 355, require owners and operators of facilities at which an extremely hazardous substance is present, at or above stated designated threshold quantities, to notify the State Emergency Response Commission ("SERC") that such facility is subject to the requirements of Section 302(b). Section 303 of EPCRA, 42 U.S.C. § 11003, and the regulations found at 40 C.F.R. Part 355, require owners and operators of facilities at which an extremely hazardous substance is present, at or above stated designated threshold quantities, to notify the State emergency planning committee of the facility representative who will participate in the emergency planning process as a facility emergency coordinator.
7. Section 311(a) of EPCRA, 42 U.S.C. § 11021(a), and the regulations found at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act of 1979 (29 U.S.C.A. Section 651 *et. seq.*) and regulations promulgated under the Act, to submit the MSDS for such chemical to the Local Emergency Planning Committee ("LEPC"), the SERC, and to the local fire department with jurisdiction over the facility, by March 1, 1991, or within three months of first becoming subject to the Section 311 requirements.
8. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and the regulations found at 40 C.F.R. Part 370, require the owner or operator of a facility which is required to have an MSDS for a hazardous chemical under the Occupational Safety and Health Act of 1979 (29 U.S.C.A. Section 651 *et. seq.*) and regulations promulgated under the Act, to prepare and submit an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370) containing the information required by those sections to the LEPC, SERC, and to the local fire department with jurisdiction over the facility, by March 1, 1991 (or March 1 of the first year after the facility first becomes subject to the Section 312 requirements), and annually thereafter.
9. Sulfuric acid is an extremely hazardous substance and diesel fuel is a hazardous chemical as defined under Section 312 of EPCRA and 40 C.F.R. Part 370.2.
10. As set forth at Sections 302, 303, 311(b) and 312(b) of EPCRA and 40 C.F.R. Part 370.20, the reporting threshold amount for all hazardous chemicals present at a facility at any one time during the preceding calendar year is ten thousand (10,000) pounds. For "extremely hazardous" substances present at the facility, the reporting threshold is five hundred (500) pounds or the threshold planning quantity ("TPQ") as defined in 40 C.F.R. Part 355, whichever is lower. The TPQ for sulfuric acid is one thousand (1,000) pounds.
11. Respondent is a person as defined at Section 329(7) of EPCRA and is the owner or operator of a facility as defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(7) and (4).

12. The information supplied by the Respondent revealed that for varying lengths of time during calendar years 1992, 1993, 1994, 1995 and 1996, Respondent had present at a total of two hundred twenty-nine (229) facilities chemicals in excess of the threshold amounts. Respondent had present at two hundred twenty-four (224) of these facilities, sulfuric acid contained in batteries in excess of five hundred (500) pounds at one time; at three (3) of these facilities, Respondent had present sulfuric acid contained in batteries in excess of five hundred (500) pounds at one time and also had present diesel fuel in quantities in excess of ten thousand (10,000) pounds at one time; and, at two (2) of these facilities, Respondent had present diesel fuel in quantities in excess of ten thousand (10,000) pounds at one time. The facility sites are described more particularly in Attachment A (CBI), incorporated by reference herein.

13. Based on the information supplied by Respondent, Respondent is subject to the requirements of EPCRA Secs. 302, 303, 311 and 312.

#### Clean Water Act Statutory and Regulatory Requirements

14. Section 311(j)(1)(C) of the Act, 33 U.S.C. §1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil...from vessels and from onshore and offshore facilities, and to contain such discharges ....."

15. 40 C.F.R. Part 112 ("Oil Pollution Prevention Regulations") which implements Section 311(j) of the Act, 33 U.S.C. §1321(j), sets forth procedures, methods and requirements to prevent the discharge of oil from non-transportation-related facilities into or upon the navigable waters of the United States and adjoining shorelines in such quantities that by regulation have been determined may be harmful to the public health or welfare or environment of the United States by owners or operators who are engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products.

16. Based on information supplied by Respondent to EPA, eighty-nine (89) of Respondent's facilities (described more particularly in Attachment B (CBI), incorporated by reference herein) are on-shore facilities within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10) and 40 C.F.R. §§ 110.2 and 112.1(b), which, due to their location, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1) or its adjoining shoreline that may either (1) violate applicable water quality standards or (2) cause a film or sheen or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines ("reasonably could be expected to violate 40 C.F.R. §§ 110 and 112.").

17. Based on information supplied by Respondent to EPA and the regulations of 40 C.F.R. Part 112(d)(2)(ii), all of GTE's eighty-nine (89) sites fall under the jurisdiction of the EPA.

18. Based on information supplied by Respondent to EPA, Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products located at the eighty-nine (89) sites.

19. Based on information supplied by Respondent to EPA, Respondent's eighty-nine (89) sites are non-transportation-related facilities under the definition incorporated by reference at 40 C.F.R. Part 112.2 and set forth in an appendix thereto and published on November 24, 1971 in Volume 36 of the Federal Register, at page 24,080.

20. Based on the above, and pursuant to Section 311(j) and its implementing regulations, the Respondent is subject to the Oil Pollution Prevention requirements of 40 C.F.R. Part 112.

#### EPCRA Findings of Fact and Conclusions of Law

21. Based on documentation supplied by GTE to EPA, GTE failed to notify the State emergency response commission for the State in which the facility is located of the presence of sulfuric acid (an extremely hazardous substance) present at the facility in excess of the TPQ of one thousand (1,000) pounds at twenty-eight (28) facilities in violation of EPCRA Section 302 and failed to notify the emergency planning commission of a facility representative who will participate in the emergency planning process as a facility emergency coordinator as required by EPCRA Section 303.

22. Based on documentation supplied by GTE to EPA, GTE has failed to file at a total of two-hundred twenty-nine (229) facilities the required MSDS form or forms with the LEPC, SERC, and appropriate fire department in violation of EPCRA Section 311. GTE has failed to file at two hundred twenty-four (224) of these facilities the MSDS for sulfuric acid (an extremely hazardous substance) present in excess of the threshold amount of five hundred (500) pounds with the LEPC, SERC and appropriate fire department in violation of EPCRA Section 311. GTE has failed to file at three (3) of these facilities the MSDS for sulfuric acid (an extremely hazardous substance) present in excess of the threshold amount of five hundred (500) pounds and the MSDS for diesel fuel present in excess of the threshold amount of ten thousand (10,000) pounds, with the LEPC, SERC, and appropriate fire department, also in violation of EPCRA Section 311. GTE has failed to file at two (2) of these facilities the MSDS for diesel fuel present in excess of the threshold amount of ten thousand (10,000) pounds, with the LEPC, SERC, and appropriate fire department, also in violation of EPCRA Section 311.

23. Based on documentation supplied by GTE to EPA, GTE has failed to submit at a total of two hundred twenty-six (226) facilities a chemical inventory form or forms with the LEPC, SERC and appropriate fire department in violation of EPCRA Section 312. GTE has failed to submit at two hundred twenty-one (221) of these facilities a chemical inventory form for sulfuric acid (an extremely hazardous substance) present in excess of the threshold amount of five hundred (500) pounds with the LEPC, SERC and appropriate fire department in violation of EPCRA Section 312. GTE has failed to submit at three (3) of these facilities a chemical inventory form

for sulfuric acid (an extremely hazardous substance) present in excess of the threshold amount of five hundred (500) pounds and a chemical inventory form for diesel fuel (a hazardous chemical) present in excess of the threshold amount of ten thousand (10,000) pounds with the LEPC, SERC and appropriate fire department, also in violation of EPCRA Section 312. GTE has failed to submit at two (2) of these facilities a chemical inventory form for diesel fuel (a hazardous chemical) present in excess of the threshold amount of ten thousand (10,000) pounds, with the LEPC, SERC, and appropriate fire department, also in violation of EPCRA Section 312.

#### Counts 1-511

24. The Complainant hereby states and alleges that, based on the information supplied by Respondent to EPA, Respondent has violated EPCRA Secs. 302, 303, 311 and 312 and regulations promulgated thereunder.

#### CWA Findings of Fact and Conclusions of Law

25. Based on documentation supplied by GTE to EPA, GTE failed to fulfill the requirements for preparation and implementation of Spill Prevention Countermeasure and Control Plans of the Oil Pollution Prevention regulations at 40 C.F.R. Part 112 at eighty-nine (89) sites.

#### Counts 512-600

26. The Complainant hereby states and alleges that, based on the information supplied by Respondent to EPA, Respondent has violated the CWA and regulations promulgated thereunder. at eighty-nine (89) sites.

#### Relief

#### EPCRA Penalty

27. Pursuant to Section 325 of EPCRA, and based upon the facts stated in Paragraphs 6 through 13 above, it is proposed that a civil penalty of two million, two hundred fifty-nine thousand, eighty (\$2,259,080) dollars be assessed against Respondent for violations alleged in Paragraphs 21, 22 and 23.

28. Section 325(c) of EPCRA authorizes a civil penalty of up to \$25,000 per day for each violation of the Act. The penalty proposed in paragraph 27 is based upon the facts stated in this Complaint, and on the nature, circumstances, extent, and gravity of the above cited violations, as well as the Respondent's history of prior violations and degree of culpability, in accordance with the EPCRA Enforcement Response Policy.

29. An EPCRA Penalty Calculation Summary is attached hereto and incorporated herein by reference.

### CWA Penalty

30. Section 311(B)(6) of the CWA authorizes a civil administrative, class II, penalty of up to \$125,000 in an action alleging violations of the Act. The penalty proposed in this complaint is based upon the facts stated in this Complaint, and on the nature, circumstances, extent, and gravity of the above cited violations, as well as the Respondent's history of prior violations and degree of culpability, in accordance with the CWA

31. Pursuant to Section 311 (B)(6) of the CWA, and based upon the facts stated in paragraphs 14 through 20 above, it is proposed that a civil penalty of one hundred twenty-five thousand (\$125,000) dollars, the administrative statutory maximum penalty, be assessed against Respondent for violations alleged in Paragraph 25.

32. A CWA Penalty Calculation Summary is attached hereto and incorporated herein by reference.

### Settlement

33. If Respondent does not contest any material fact of this EPCRA matter or the amount of the EPCRA proposed penalty, Respondent may make payment of the penalty, by cashier's or certified check made payable to "Treasurer of the United States" in the amount of \$2,259,080 and send to:

United States Environmental Protection Agency  
Headquarters Hearing Clerk  
PO Box 360277M  
Pittsburgh, PA 15251

(Note that payment of the proposed penalty alone does not satisfy Respondent's legal obligation to file complete and accurate notifications and reports as required by Sections 311 and 312 of EPCRA and 40 C.F.R. Parts 355 and 370. Failure or refusal to file said notifications and reports may subject Respondent to additional civil penalties of up to \$25,000 per day of violation.)

34. If Respondent does not contest any material fact of this CWA matter or the amount of the CWA proposed penalty, Respondent may make payment of the penalty, by cashier's or certified check in the amount of \$125,000 and made payable to "Oil Spill Liability Trust Fund" and send to:

Commander, National Pollution Funds Center  
United States Coast Guard  
Ballston Common Office Building, Suite 1000  
4200 Wilson Boulevard  
Arlington, VA 22203

(Note that payment of the proposed penalty alone does not satisfy Respondent's legal obligation to prepare, and implement a SPCC plan as required by CWA Section 311 (B)(6)(ii) and 40 C.F.R. 112.3(b).

35. The Respondent shall note on each penalty payment check the title and docket number of this case. The Respondent shall also submit copies of the checks to the following persons:

Hearing Clerk  
Environmental Appeals Board  
U.S. Environmental Protection Agency  
401 M Street, SW  
Washington, DC 20460

Gerard Kraus, MED  
U.S. Environmental Protection Agency (2248-A)  
401 M Street, SW  
Washington, DC 20460

Notice of Opportunity to Request a Hearing

Answer and Request for Hearing

36. In accordance with 5 U.S.C. § 554, Respondent has the right to request a hearing to contest any material fact contained in this Complaint above or to contest the appropriateness of the proposed penalty set forth herein. Such a hearing will be held and conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, one copy of which is enclosed herewith.

37. To avoid being found in default, which constitutes an admission of all facts alleged in this Complaint and a waiver of the right to hearing, Respondent must file a written answer and request for hearing within twenty (20) days of service of this Complaint and Notice of Opportunity for Hearing. Said answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in this Complaint. The answer shall also state: a) the circumstances or arguments which are alleged to constitute the grounds of defense; b) the facts that Respondent intends to place at issue; and c) whether a hearing is requested.

38. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for hearing. Failure to deny any of the factual allegations in the Complaint constitutes an admission of the undenied allegations. Said answer shall be filed with the following:

Headquarters Hearing Clerk  
U.S. Environmental Protection Agency  
401 M Street, SW  
Washington, DC 20460

39. If Respondent fails to file a written answer and request for a hearing within twenty (20) days of service of this Complaint and Notice of Opportunity for Hearing, such failure will constitute a binding admission of all allegations made in this Complaint and a waiver of Respondent's right to a hearing under EPCRA or the CWA. A Default Order may thereafter be issued by the Regional Administrator and the civil penalties proposed herein shall become due and payable without further proceedings.

Informal Settlement Conference

40. Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request a settlement conference, please contact:

Gerard Kraus, MED  
U.S. Environmental Protection Agency (2248-A)  
401 M Street, SW  
Washington, DC 20460  
Telephone: 202-564-6047

41. Please note that a request for an informal settlement conference does not extend the twenty (20) day period during which a written answer and request for a hearing must be submitted.

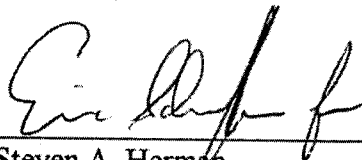
42. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of informal conference. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Consent Order. The issuance of such a Consent Agreement and Consent Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated therein.



43. If Respondent has neither achieved a settlement by informal conference nor filed an answer within the twenty (20) day time period allowed by this Notice, the penalties proposed above may be assessed by the entry of a Default Order.

Date

9/24/97



Steven A. Herman  
Assistant Administrator  
Office of Enforcement and  
Compliance Assurance

Enclosures: Penalty Calculation Summaries, EPCRA and CWA  
Consolidated Rules of Practice Governing the  
Administrative Assessment of Civil Penalties  
40 C.F.R. Part 22  
EPCRA Enforcement Response Policy for Sections 311 and 312

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true and correct copy of this Complaint and Notice of Opportunity for Hearing to the EPA Headquarters Hearing Clerk, United States Environmental Protection Agency, 401 M. Street, SW, Washington, DC 20460.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Complaint and Notice of Opportunity for Hearing; a copy of the Penalty Calculation Summary; a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22; and a copy of the Final Penalty Policy for Sections 311, and 312; and a copy of the August 10, 1992, Enforcement Response Policy for Section 311 and 312 of EPCRA to the following registered agent for GTE:

Daniel S. York, Esq.  
Assistant General Counsel, Litigation  
GTE  
One Stamford Forum  
Stamford, CT 06904

Sept. 29, 1997  
Date

Marged G. Harris  
Marged G. Harris